

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JAMES H. GREEN,

Petitioner,

v.

E.K. McDANIEL, *et al.*,

Respondents.

Case No. 3:11-cv-00230-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

On March 14, 2012, the Court entered an order, granting in part and denying in part, respondents' motion to dismiss the petition. (Dkt. no. 28.) The Court made specific findings that Grounds 5B and 5D of the petition were unexhausted. (*Id.*). Petitioner was granted thirty days to do one of the following:

(1) inform this court in a sworn declaration that he wishes to formally and forever abandon the unexhausted grounds for relief in his federal habeas petition and proceed on the exhausted grounds; OR (2) inform this court in a sworn declaration that he wishes to dismiss this petition without prejudice in order to return to state court to exhaust his unexhausted claims; OR (3) file a motion for a stay and abeyance, asking this court to hold his exhausted claims in abeyance while he returns to state court to exhaust his unexhausted claims.

(Dkt. no. 28, at p. 10.)

Instead of choosing one of the options permitted by the Court's order, petitioner filed a "motion for stay or alternatively, motion for enlargement of time to object to

1 Magistrate Report.” (Dkt. no. 30.) On January 28, 2013, this Court denied the motion  
2 because nowhere in petitioner’s motion did he actually seek a stay. (Dkt. no. 28.) The  
3 Court also denied petitioner’s motion for copies of the trial transcript from his criminal  
4 trial because the transcripts requested by petitioner are included in the exhibits attached  
5 to respondents’ motion to dismiss. (*Id.*) The Court further noted that petitioner failed to  
6 follow this Court’s prior direction to choose one of the three options enumerated in the  
7 order of March 14, 2012. (*Id.*) Petitioner was ordered to show cause, in writing, within  
8 twenty days, why this action should not be dismissed for failure to obey this Court’s  
9 order. (*Id.*)

10 In response to the Court’s order of January 28, 2013, petitioner filed a motion for  
11 an extension of photocopy expenses (dkt. no. 40) and a motion for a stay, and in the  
12 alternative, motion for enlargement of time to show cause (dkt. no. 39), both filed on  
13 March 13, 2013. Petitioner also filed a motion entitled “motion for stay, alternatively  
14 motion for additional 14 days to show cause.” (Dkt. no. 41.) Good cause appearing,  
15 petitioner’s motion for an extension of his copywork limit to \$25.00 is granted.  
16 Petitioner’s motions for an extension of time are also granted.

17 Additionally, petitioner will be granted one final opportunity to comply with the  
18 Court’s order of March 14, 2012, requiring petitioner to choose an option regarding his  
19 unexhausted claims. As a matter of clarification, when the Court stated that one option  
20 was for petitioner to file a motion for stay, this specifically means a motion to stay this  
21 action to return to state court to exhaust his unexhausted claims, pursuant to *Rhines v.*  
22 *Weber*, 544 U.S. 269 (2005), as specified at pages 9-11 of the Court’s order. (Dkt. no.  
23 28.)

24 It is therefore ordered that petitioner’s motion for an extension of his copywork  
25 limit to \$25.00 (dkt. no. 40) is granted.


26 It is further ordered that petitioner’s motions for extension of time (dkt. nos. 39 &  
27 41) are granted.

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1 It is further ordered that, within thirty (30) days of the entry of this order, petitioner  
2 shall comply with the Court's order of March 14, 2012 (dkt. no. 28) by choosing one of  
3 the three options given regarding his unexhausted claims and informing the Court of the  
4 same.

5 It is further ordered that petitioner's failure to fully comply with this Court's order  
6 will result in dismissal of this action.

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8 DATED THIS 27<sup>th</sup> day of February 2014.

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12 MIRANDA M. DU  
13 UNITED STATES DISTRICT JUDGE  
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